

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA 06-746

April 25, 2007

BOB'S BAIL BONDS, INC.

APPELLANT

APPEAL FROM THE CONWAY
COUNTY CIRCUIT COURT
[CV-2006-17]

V.

HONORABLE DAVID MCCORMICK,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

SARAH J. HEFFLEY, Judge

Appellant, Bob's Bail Bonds, Inc., appeals a judgment of bond forfeiture in the amount of \$35,000.00 entered against it and the denial of a motion to set aside that judgment. Appellant argues on appeal that the State failed to strictly comply with Arkansas Code Annotated section 16-84-207 (Repl. 2005), which governs actions on bail bonds in circuit court. Appellant also argues that the summons and notice it received from the court did not properly comport with the rules of civil or criminal procedure, and therefore, the circuit court did not have authority to enter judgment against it. We find appellant's arguments are not preserved for our review and affirm.

Appellant was the surety on a bail bond posted for the appearance of Jamal Calvin

Sandidge in the Conway County Circuit Court on July 12, 2005. Sandidge failed to appear in court as required, and on July 18, 2005, the circuit court issued a summons and notice to appellant to appear before the court on August 9, 2005, to show cause why the bond should not be forfeited. For reasons not reflected in the record, this notice was never delivered to appellant. On September 20, 2005, the prosecuting attorney sent a letter, via certified mail, to appellant, advising it that Sandidge failed to appear in court, and including a copy of the first notice as well as a second notice and summons directing appellant to appear for a show cause hearing on October 11, 2005. Appellant received his notice and summons on September 23, 2005.

On October 11, 2005, appellant appeared before the court through its agent, Gary Trammel. At the hearing, Trammel acknowledged appellant was looking for Sandidge, but he had not yet been located. The prosecutor noted that the seventy-five-day time period under Ark. Code Ann. § 16-84-207(c)(1)(A), in which appellant can produce the defendant to prevent a judgment of forfeiture, had not yet expired, but once that time period had expired, the State would produce a forfeiture order for the judge to sign. Trammel agreed to this and the hearing was concluded.

On January 23, 2006, the trial court entered a judgment forfeiting the bond, and it also entered an order, nunc pro tunc to July 12, 2005, for the issuance of an arrest warrant for the defendant and for the surety to appear, as required under Ark. Code Ann. § 16-84-207(b)(1). In its judgment, the circuit court specifically noted that appellant had appeared before the court on October 11, 2005, and had failed to show cause why the bond should

not be forfeited.

On February 2, 2006, appellant filed a motion to set aside the judgment. A hearing was held on the motion on February 24, 2006, at which the appellant argued that (1) the State had failed to strictly comply with the statutory requirements under section 16-84-207(b)(2) by not providing appellant with “immediate” notice of the defendant’s failure to appear, and (2) the notice and summons was not in the form set out in Arkansas Rule of Criminal Procedure 9.5.¹ Appellant argued that the judgment should be set aside and the seventy-five-day time period should be restarted. In a letter order dated March 6, 2006, the court denied the motion. In its letter, the court stated:

Applying the Arkansas Rules of Civil Procedure to the facts of this case, I believe that the February 2, 2006, motion of the defendant Bob’s Bail Bonds, Inc. is a post judgment motion that is governed by ARCP 59 and/or 60. I find that the issue being raised by the present motion is one that should have been raised at the trial of this matter and is not a proper motion under Rule 59. Additionally, I find that the motion does not allege any grounds recognized as sufficient for setting aside the Judgment under the provisions of Rule 60. Therefore, the Motion of the defendant of Bob’s Bail Bonds, Inc. is denied.

Appellant then filed a timely appeal with this court.

On appeal, appellant again presents the above arguments and argues that because of these failures to follow statutory procedure, the circuit court never obtained jurisdiction over appellant and the judgment against appellant should be declared void. Appellant is

¹ Ark. R. Crim. P. 9.5 provides a sample form for an “Order for Issuance of Arrest Warrant and Summons/Order for Surety to Appear.” However, the form provided in Rule 9.5 relates to a finding that the defendant has violated a condition of his release when the defendant is given conditions in an order upon being released on bail. There is no evidence the defendant in this case had any order against him according to Rule 9.5; therefore, the applicability of this rule is questionable.

correct in its general assertion that statutory service requirements must be strictly construed and compliance with them must be exact. *Bob Cole Bonding v. State*, 340 Ark. 641, 13 S.W.3d 147 (2000). However, in this case, we agree with the trial court that appellant's motion was a post-judgment motion governed by Rule 59 of the Arkansas Rules of Civil Procedure, specifically a motion for a new trial under Rule 59(a). While the motion made below was ostensibly a "Motion to Set Aside Judgment," this court will not be "guided blindly by titles but should look to the substance of the motions to ascertain what they seek. ... We continue to abide by the well-established rule that a pleading will not be judged entirely by what it is labeled but also by what it contains." *Dodge v. Lee*, 352 Ark. 235, 239, 100 S.W.3d 707, 710 (2003) (quoting *Cornett v. Prather*, 293 Ark. 108, 111, 737 S.W.2d 159, 160–61 (1987)). Our case law has clearly established that an objection first made in a motion for a new trial is not timely. *Lee v. Daniel*, 350 Ark. 466, 91 S.W.3d 464 (2002). In *Hodges v. State*, 27 Ark. App. 154, 767 S.W.2d 541 (1989), this court stated that to allow a party to raise an objection for the first time in a motion for a new trial would give the party "license to 'lie behind the log,' waiting to see if they obtain an adverse verdict" before complaining about any alleged irregularities. *Id.* at 158, 767 S.W.2d at 544.

In addition, our supreme court has clearly stated that the burden of proof, as well as the preservation of issues, lies with the surety in cases involving the forfeiture of bail bonds. *Bob Cole Bonding, supra*. "That, of course, is the essence of a show-cause hearing—that the summoned bond company should offer proof or argument as to why the bail bond should not be forfeited." *Id.* at 644–45, 13 S.W.3d at 149. In the case at bar, appellant appeared

before the circuit court at the show cause hearing on October 11, 2005, yet it failed to raise any objections or arguments as to the timeliness of service, the form of the documents served, or the manner of service. Because these arguments were not addressed to the trial court in a timely manner, they cannot properly be considered in a motion for a new trial or on appeal from a denial of a motion for new trial.

Appellant also offers two additional arguments on appeal: (1) the State failed to strictly comply with Ark. Code Ann. § 16-84-207(b)(1) by not entering a written notation of the defendant's failure to appear until January 23, 2006, nunc pro tunc to July 12, 2005; (2) the summons and notice issued by the circuit clerk did not comply with minimum due process as required by Rule 4(b) of the Arkansas Rules of Civil Procedure. However, it is well-settled that appellants are precluded from raising arguments on appeal that were not first brought to the attention of the trial court. *See, e.g., Green v. State*, 365 Ark. 478, ___ S.W.3d ___ (2006). Issues raised for the first time on appeal will not be considered because the trial court never had an opportunity to rule on them. *Id.* On appellate review, issues of even constitutional dimension are waived if not presented to the trial court and a ruling obtained. *Lewis v. Robertson*, 96 Ark. App. 114, ___ S.W.3d ___ (2006). Because these arguments were not first presented to the trial court for a ruling, we find they are not preserved for review. We therefore affirm the trial court's denial of appellant's motion to set aside the judgment.

Affirmed.

ROBBINS and GLOVER, JJ., agree.
